

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al*

Debtors

PROMESA

Title III

No. 17 BK 3283-LTS

Re: ECF No. 1065-1, 1512-1, 2839-1,
4493, 4499, 4500, 4595, 4720, 4723

(Jointly Administered)

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al*

Debtors

PROMESA

Title III

No. 17 BK 3283-LTS

**This Stipulation relates only to the
Commonwealth of Puerto Rico**

MOTION TO COMPEL COMPLIANCE WITH STIPULATION

Now Comes Corporación Marcaribe Investment and respectfully requests that this Honorable Court compels and directs the Commonwealth of Puerto Rico to adhere to the terms of the stipulation (“Stipulation”) (See Attached Exhibit A) entered by the parties. Corporación Marcaribe Investment states as follows:

1. On December 18, 2018, Corporación Marcaribe Investment filed a *Motion to Determine the Applicability of the Automatic Stay and/or Relief from the Automatic Stay* (Docket No. 4493). See Exhibit A.

2. On January 11, 2019, The Commonwealth of Puerto Rico and John O. Desmond, Chapter 7 Trustee of the Estate of Corporación Marcaribe Investment, through Marcaribe's Counsel, signed a Stipulation to allow the continuance of Case No. AAC2015-0050 of Inverse Condemnation to continue at State Court. See Exhibit B.

3. On December 23 of 2020, State Court notified judgment in case AAC2015-0050.

4. On January 6, 2021 and January 7 2021, motions for reconsideration were filed by Marcaribe. The motions were denied.

5. On February 2, 2021, an appeal was filed at the Puerto Rico Court of Appeals, Case no. KLAN202100069.

6. On March 30, 2021, the Commonwealth of Puerto Rico filed a brief requesting dismissal of the appeal for lack of jurisdiction claiming that the Stipulation does not allow the Puerto Rico Court of Appeals to review the judgment.

7. The aforementioned Stipulation among other things agrees to the following:

a. *“The Stipulation shall be construed and interpreted with the laws of Puerto Rico...”* See Stipulation No. 8 at Page 5 of 6.

b. *“This Stipulation may not be modified other than by a signed writing executed by the parties hereto.”* See Stipulation No. 10 at Page 6 of 6.

c. *“The District Court shall retain jurisdiction from or relating to this Stipulation.”* See Stipulation No. 11 at Page 6.

8. The Commonwealth of Puerto Rico's request for dismissal is a violation of the aforementioned Stipulation for the following reasons:

a. The judgment is final after 30 days of notification or after appellate proceedings conclude.

b. The request for dismissal to the Puerto Rico Appellate Court to make a determination on the merits of the Stipulation is inappropriate, unfounded and lacks valid legal basis; the jurisdiction to hear matters or disputes arising from the Stipulation lies in this District Court.

9. Marcaribe thus requests that this Honorable Court ratifies the Stipulation and confirms that the Stipulation does not prohibit the constitutional right to file an appeal according to applicable state and federal law.

WHEREFORE, Marcaribe requests that this Honorable Court compels the Commonwealth of Puerto Rico to continue compliance with the Stipulation and stops any actions hindering the implementation of the same and for any other request deemed necessary and proper.

Dated: April 4, 2021

RESPECTFULLY SUBMITTED by Debtor, through Counsel
/s/Carmenelisa Perez-Kudzma, Esq.
Perez-Kudzma Law Office, PC
35 Main Street, Wayland, MA 01778
carmenelisa@pklaw.law
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UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO

Debtor.

PROMESA

Title III

No. 17 BK 3283-LTS

EXHIBIT A

NOTICE OF WITHDRAWAL OF:

**MOTION TO DETERMINE THE APPLICABILITY OF THE AUTOMATIC STAY
AND/OR FOR RELIEF FROM THE AUTOMATIC STAY
(DOCKET #4493)**

Now comes Corporación Marcaribe Investment (hereinafter “Marcaribe”), a Creditor and a Chapter 7 Debtor in the District of Massachusetts, through Marcaribe’s Counsel, and with the assent of is Chapter 7 Trustee, John Desmond, Esq., though his Counsel, respectfully withdraws its Motion for Relief from the Automatic Stay (Document #4493) for the following reasons:

- 1) The Parties have conferred the matter and reached a stipulation.

WHEREFORE, Marcaribe respectfully requests that this Court notices withdrawal of its motion for relief and for any other relief deemed necessary and proper.

Corporacion Marcaribe Investment,
Through Counsel for Marcaribe,
Attorney in this matter and in a Chapter 7 Bankruptcy in the
District of Massachusetts

With the Assent of Attorney Kate Nicholson,
Counsel for Marcaribe's Chapter 7 Trustee, John Desmond, District of Massachusetts
/s/ Carmenelisa Perez-Kudzma
U.S. District of Puerto Rico #305612
Perez-Kudzma Law Office, P.C
Arecibo #349, Urb. La Cumbre, San Juan, PR 00926
and
35 Main Street, Suite 1
Wayland, MA 01778
T: (781) 209-5596
F: (978-600-1482
carmenelisa@pklolaw.com

Dated: January 11, 2019

The filing of this Motion has been assented to by:

Counsel for John Desmond
Chapter 7 Trustee

/s/ Kate E. Nicholson
Nicholson Herrick LLP
21 Bishop Allen Dr.
Cambridge, MA 02139
857.600.0508 (voice or text)
617.812.0405 (facsimile)
www.nicholsonherrick.com

Dated: January 11, 2019

Service

A. All Documents shall be served, in the manner described herein, on the following parties

i) United States District Court for the Southern District of New York

Daniel Patrick Moynihan United States Courthouse
500 Pearl St., Suite No. 3212
New York, New York 10007-1312

ii) Office of the United States Trustee for Region 21

Edificio Ochoa, 500 Tanca Street, Suite 301
San Juan, PR 00901-1922

(iii) Puerto Rico Fiscal Agency and Financial Advisory Authority (AAFAF):

Puerto Rico Fiscal Agency and Financial Advisory Authority
Roberto Sánchez Vilella (Minillas) Government Center
De Diego Ave. Stop 22
San Juan, Puerto Rico 00907
Attn: Gerardo J. Portela Franco
Mohammad Yassin, Esq.
E-Mail: Gerardo.Portela@aafaf.pr.gov
Mohammad.Yassin@aafaf.pr.gov

(iv) Counsel for AAFAF:

O'Melveny & Myers LLP
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New York, New York 10036
Attn: John J. Rapisardi, Esq.
Suzanne Uhland, Esq.
Peter Friedman, Esq.
Diana M. Perez, Esq.
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dperez@omm.com

Law Offices of Andrés W. López, Esq.
902 Fernández Juncos Ave.
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Attn: Andrés W. López, Esq.
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(v) Counsel for AAFAF (PREPA):

Greenberg Traurig LLP
MetLife Building
200 Park Avenue
Cancio, Nadal, Rivera & Díaz, P.S.C.
PO Box 364966
San Juan, PR 00936-4966

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

EXHIBIT B

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et
al.*,

Debtors.¹

PROMESA
Title III

No. 17 BK 3283-LTS

Re: ECF Nos. 1065-1, 1512-1,
2839-1, 4493

(Jointly Administered)

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et
al.*,

Debtor.

PROMESA
Title III

No. 17 BK 3567-LTS

**This Stipulation relates only to
the Commonwealth of Puerto
Rico**

**STIPULATION MODIFYING THE AUTOMATIC STAY
BETWEEN THE COMMONWEALTH OF PUERTO RICO AND
CORPORACIÓN MARCARIBE INVESTMENT**

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747). (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

This stipulation (the "Stipulation") is made as of January 11, 2019, by and between the Commonwealth of Puerto Rico (the "Commonwealth") and John O. Desmond, Chapter 7 Trustee of the estate of Corporación Marcaribe Investment (the "Movant").²

RECITALS

WHEREAS, on May 4, 2015, Movant commenced an inverse condemnation proceeding against the Commonwealth with respect to certain land belonging to Movant in the Puerto Rico Court of First Instance (the "Prepetition Court"), captioned *Corporacion Marcaribe Investment vs. DRNA*, Case No. A AC2015-0050 (the "Prepetition Action");

WHEREAS, on May 3, 2017, the Commonwealth, by and through the Oversight Board, as the Commonwealth's representative pursuant to PROMESA section 315(b), filed a petition with the United States District Court for the District of Puerto Rico (the "District Court") under title III of PROMESA (the "Title III Case");

WHEREAS, on August 17, 2017, as amended on October 24, 2017 and April 4, 2018, the District Court entered the *Order Amending Case Management Procedures* (the "Case Management Order"), which revised the *Notice, Case Management and Administrative Procedures* to implement a protocol (the "Lift Stay Protocol") for filing motions for relief from the automatic stay set forth in Bankruptcy Code sections 362(a) and 922(a),³ as made applicable

² The Financial Oversight and Management Board for Puerto Rico (the "Oversight Board"), as the Debtors' representative pursuant to section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* ("PROMESA"), has authorized the Commonwealth to enter into this Stipulation.

³ In a title III case, Bankruptcy Code section 922 extends the self-executing provisions of Bankruptcy Code section 362 to, among other things, actions against officers and inhabitants of the debtor to enforce claims against the debtor. See *Order Pursuant to PROMESA Section 301(a) and Bankruptcy Code Sections 105(a), 362(a), 365, and 922 Confirming (I) Application of the Automatic Stay to Government Officers, Agents, and Representatives, (II) Stay of Prepetition Lawsuits, and (III) Application of Contract Protections* [ECF No. 543] ("For the avoidance of doubt, the protections of Bankruptcy Code section 922(a)(1) with respect to officers and inhabitants of the Debtors, as set forth in paragraph 4(a) [of the Order], apply in all respects to the Debtors' officers in both their official and personal capacities with respect to actions whereby parties pursuing such actions seek to enforce claims against any of the Debtors.").

to the Title III Case by PROMESA section 301(a) (the “Title III Stay”) [ECF Nos. 1065, 1512, 2839];

WHEREAS, under the Lift Stay Protocol, Movant is required to (a) send notice (the “Lift Stay Notice”) to counsel to the Oversight Board and the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF”) to advise them of Movant’s intent to seek relief from the Title III Stay at least fifteen (15) business days prior to filing a motion seeking such relief (the “Lift Stay Notice Period”) and (b) meet and confer with the Commonwealth during the Lift Stay Notice Period:

WHEREAS, on June 4, 2018, Corporación Marcaribe Investment filed a voluntary petition for relief under chapter 7 of the United States Bankruptcy Code in the District of Massachusetts, case number 18-12101-JNF, and John O. Desmond was duly appointed chapter 7 trustee.

WHEREAS, on November 27, 2018, Movant sent its Lift Stay Notice to the Oversight Board and AAFAF seeking to lift the Title III Stay to allow Movant to continue with the Prepetition Action filed before the Prepetition Court to pursue claims against the Commonwealth; and

WHEREAS, on December 18, 2018, Movant filed its *Motion to Determine the Applicability of the Automatic Stay and/or for Relief from the Automatic Stay* [ECF No. 4493] (the “Motion”), requesting the Court make a determination that the automatic stay does not apply to the Prepetition Action, or in the alternative, to modify the automatic stay to allow Movant to continue the Prepetition Action. Motion ¶ 26.

WHEREAS, following the filing of the Motion, the Commonwealth and Movant met and conferred and have resolved Movant’s request in the Motion.

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among the Commonwealth and Movant, through their counsel, each of whom represent and warrant they possess the requisite authority to bind the respective parties hereto, as follows:

1. The Title III Stay is hereby modified solely to the limited extent necessary to enable the Prepetition Action to proceed to final judgment before the Prepetition Court; provided, however, the Title III Stay shall continue to apply in all other respects to the Prepetition Action, including, but not limited to, the execution and enforcement of any judgment, for any claims for money damages and provisional remedies against the Commonwealth or any other Title III Debtor.

2. Movant expressly reserves the right to seek further relief from the Title III Stay after the Prepetition Court has rendered its determination in accordance with the Case Management Order and the Commonwealth reserves all rights and defenses with respect to such request.

3. Nothing contained in this Stipulation shall operate as a waiver or modification of the Title III Stay so as to permit the prosecution against the Commonwealth or any other Title III Debtor of any claim or claims by anyone other than Movant as provided for herein and the Commonwealth reserves all rights, defenses, and protections with respect to any matters pending or that may arise in the Title III Case, including the treatment of any claim arising from the Prepetition Action under a plan of adjustment or otherwise in the Title III Case.

4. The Commonwealth and Movant represent and warrant that they are properly and fully empowered to enter into and execute this Stipulation, that they know of no contractual commitment or legal limitation of, impediment to, or prohibition against their entry into this Stipulation, and that the Stipulation is legal, valid, and binding upon them.

5. Neither this Stipulation nor any statement made, action, or position taken, or document prepared or executed in connection with the negotiation, execution, or implementation of this Stipulation shall be deemed to be, or construed as, (a) an admission by any party of any liability, wrongdoing, act, or matter or that any claim or defense has or lacks merit; (b) a waiver of the Commonwealth's rights to dispute, contest, setoff, or recoup any claim, including any claims asserted by Movant in the Prepetition Action, or assert any related rights, claims, or defenses and all such rights are reserved; (c) a waiver of Movant's or the Commonwealth's rights to determine and/or contest the applicability of a discharge to any judgment that may be issued in the Prepetition Action pursuant to 11 U.S.C. § 944, as made applicable to these proceedings by virtue of PROMESA section 301(a); or (d) an approval or assumption of any agreement or contract between the parties under Bankruptcy Code section 365.

6. Nothing in this Stipulation shall be deemed or construed as (a) creating or conferring any right upon any persons or entities (other than Movant as expressly provided in this Stipulation), or (b) evidence of any willingness or obligation on Commonwealth's part to consent to any other or future modifications of or relief from the Title III Stay with respect to any persons or entities.

7. This Stipulation contains the entire agreement by and between the parties with respect to the subject matter hereof, and all prior understandings or agreements, if any, are merged into this Stipulation.

8. This Stipulation shall be construed and interpreted in accordance with the laws of Puerto Rico. For purposes of construing this Stipulation, neither of the parties shall be deemed to have been the drafter of the Stipulation.

9. Electronic copies of signatures on this Stipulation are acceptable, and an electronic copy of a signature on this Stipulation is deemed an original. This Stipulation may be executed in counterparts, each of which is deemed an original, but when taken together constitute one and the same document.

10. This Stipulation may not be modified other than by a signed writing executed by the parties hereto.

11. The District Court shall retain jurisdiction to hear any matters or disputes arising from or relating to this Stipulation.

12. This Stipulation shall be immediately effective and enforceable upon execution.

IN WITNESS WHEREOF and in agreement herewith, by and through their counsel, the parties have executed and delivered this Stipulation as of the date first set forth above.

WANDA VÁZQUEZ GARCED
Secretary of Justice

/s/ WANDYMAR BURGOS VAGAS
WANDYMAR BURGOS VARGAS
USDC 223502
Deputy Secretary in Litigation
Department of Justice
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Corporación Marcaribe Investment
Through Counsel,

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With the Assent of:

Attorneys for the Commonwealth of Puerto Rico

John O. Desmond, Chapter 7 Trustee of the estate
of Corporación Marcaribe Investment

/s/ Kate E. Nicholson

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